decades. As a result, long after a statute of limitations expires, a single servicemember could file a suit seeking to invalidate a long-standing annexation, bond issue, municipal election, or other government action. The Relief Act would cast a pall of indefinite uncertainty over many government activities, frustrating state and local governments' ability to plan, budget, and carry out their operations.

Because the Relief Act would so interfere with state and local governance, the plain statement rule will permit Petitioners' reading of the statute only if they demonstrate an unmistakably clear indication Congress intended this interference. No such indication exists. Nothing in the Relief Act's language or legislative history suggests Congress intended the statute to indefinitely toll claims seeking to invalidate large-scale government actions like annexations. In fact, a Senate report published while Congress considered the statute even declared that, beyond two tax-related provisions not relevant here, the Relief Act "would have no impact on state, local or tribal governments." S. Rep. No. 108-197, at 13 (2003). Congress never intended the Relief Act to disrupt government operations as Petitioners claim. The North Carolina Court of Appeals properly interpreted the statute, and its decision should stand.

Finally, even had Congress intended the Relief Act to toll claims seeking to invalidate annexations, the statute would be unconstitutional as so applied. This Court has long recognized that municipalities are agents of state government and, consequently, that controlling municipal borders is a matter of state political discretion. Relying upon this Court's guidance on this issue, lower courts have correctly held that annexation (unless it implicates suspect classifications or fundamental rights) is a state issue lying beyond the reach of federal law. Petitioners' view of the

Relief Act would frustrate North Carolina's sovereign authority over annexation, rendering the Relief Act unconstitutional as applied.

The decision below did not create a conflict among lower courts, nor did it implicate an urgent issue of federal law. The North Carolina Court of Appeals also followed this Court's precedents and properly interpreted the Relief Act. The Petition should be denied.

THE PETITION FOR WRIT OF *CERTIORARI* SHOULD BE DENIED.

I. *CERTIORARI* IS NOT NEEDED TO RESOLVE A CONFLICT AMONG LOWER COURTS OR TO ADDRESS AN URGENT QUESTION OF FEDERAL LAW.

Petitioners' Petition disregards United States Supreme Court Rule 10, which describes generally when this Court grants *certiorari*. The City respectfully submits that, under Rule 10, *certiorari* would be warranted only if: (i) the decision below conflicted with a decision of this Court or of another court or (ii) the decision below involved "an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c). Neither of these criteria is met here.

First, the decision below did not conflict with the decisions of this Court or of any other court. Below, the North Carolina Court of Appeals held the Relief Act does not toll claims seeking to invalidate annexations or other large-scale government action. The City has never found any decision of this Court or of any other court holding otherwise. Even Petitioners concede that they "have found no authority in any jurisdiction addressing the specific question presented here[.]" Petition, p. 27. No other court appears to have ever considered the issue. Consequently,

the decision below did not conflict with this Court's precedents, nor does it form part of a larger conflict among lower courts.

The Court of Appeals' decision below also failed to concern "an important question of federal law" demanding this Court's attention. Sup. Ct. R. 10(c). Again, this case appears to be the first considering whether Section 206 of the Relief Act tolls claims seeking to invalidate annexations or other large-scale government action. No other federal or state court decision, from any jurisdiction, could be found considering the issue. This question has never arisen before, despite the Relief Act's nationwide applicability and decades-long history. (Although the Relief Act was adopted in 2003, it amended the Soldiers and Sailors Civil Relief Act, a statute with an analogous tolling provision that had existed since World War II. *See* 50 U.S.C. App. § 525 (2002)). Because this question has arisen only once during the Relief Act's long history, and because Petitioners offer no reason to believe it will continue arising with any greater frequency, it is not urgent or pressing enough to warrant *certiorari*.

II. THIS MATTER IS NOW MOOT.

Petitioners' Petition is also moot because they cannot obtain the relief they seek. The City's annexation became effective on September 30, 2005, and North Carolina courts lack authority to invalidate annexations after they take effect. Therefore, even if this Court reversed the decision below and remanded this matter for North Carolina's courts to review the annexation's validity, those courts could not void the annexation even if they found it invalid.

Under North Carolina's constitution, the state legislature has exclusive (but delegable) authority to control municipal borders. *See* N.C. Const. Art. VII, Sec. 1. Through the annexation statutes, the legislature has partially

delegated its authority to expand municipal boundaries. However, it retains exclusive authority to remove territory from a municipality.

Specifically, N.C. Gen. Stat. § 160A-50 authorizes state courts to review challenged annexations, and N.C. Gen. Stat. § 160A-50(g) authorizes them to invalidate annexations that violate statutory requirements. However, under this statutory scheme, state courts may invalidate annexations only before they become effective. An annexation cannot become effective until at least 70 days after its adoption, while any challenges must be filed within 60 days after its adoption. *See* N.C. Gen. Stat. § 160A-49(e)(4) (2004); N.C. Gen. Stat. § 160A-50(a) (2004). Further, if a challenge is filed, the annexation's effective date is delayed until the reviewing courts have resolved the challenge. *See* N.C. Gen. Stat. § 160A-50(i) (2004). Therefore, the statutes contemplate reviewing courts invalidating only pending annexation ordinances, not annexation ordinances that have taken effect. The state legislature retains exclusive power to reverse a completed annexation.

North Carolina's Supreme Court has recognized that state courts lack authority to reverse completed annexations. *See Gaskill v. Costlow*, 270 N.C. 686, 155 S.E.2d 148 (1967). In *Gaskill*, the state Supreme Court held that an attempted annexation challenge was invalid partially because the annexation already had taken effect. The challengers therefore could not obtain a court ruling invalidating the annexation. Rather, their remedy was limited to compelling the annexing city to extend its municipal services to the annexed area:

> Having been completed without being challenged in the manner prescribed by statute, the annexation is an accomplished fact; and the remedies of property owners

> and citizens within the annexed areas are those provided in G.S. 160-453.5(h).

Gaskill, 155 S.E.2d at 151. The statute cited, N.C. Gen. Stat. § 160-453.5(h), permitted property owners only to compel an annexing municipality to extend municipal services to an annexed area. Because the annexation was complete, this was the only remedy available.[3]

If Petitioners prevailed before this Court, they would obtain only a remand so that North Carolina's courts could review the City's annexation under N.C. Gen. Stat. §160A-50. Reviewing courts, however, would have no authority under North Carolina law to grant the relief Petitioners ultimately seek, invalidation of the now-effective annexation. Because Petitioners no longer could obtain that relief, this matter has become moot.

III. THE COURT BELOW SOUNDLY INTERPRETED THE RELIEF ACT BY RELYING UPON THIS COURT'S PRECEDENTS.

Certiorari is also unwarranted because the decision below was sound. The North Carolina Court of Appeals obeyed this Court's precedents and properly interpreted the Relief Act.

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[3] After *Gaskill* was decided, the annexation statutes were amended and re-codified into Article 4A of Chapter 160A of the North Carolina Code. *See* N.C. Gen. Stat. § 160A-29 *et seq.* (2004). These current annexation statutes still grant reviewing courts no authority to invalidate completed annexations.

A. The Plain Statement Rule Governs Because Petitioners' Position Would Frustrate North Carolina's Sovereign Choices for Structuring Its Government.

1. The plain statement rule applies.

Below, the North Carolina Court of Appeals held Congress never intended Section 206 of the Relief Act to toll claims seeking to invalidate annexations.[4] To reach this conclusion, the Court invoked the plain statement rule (also called the "clear statement rule"), which prohibits interpreting a federal statute to intrude upon state sovereignty absent a "plain statement" showing an "unmistakably clear" congressional intent to intrude. *See Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991). This Court has recognized the plain statement rule applies if a federal statute threatens to frustrate a state's control over its municipalities. *See Nixon v. Missouri Mun. League*, 541 U.S. 125, 124 S. Ct. 1555, 1565 (2004) (plain statement rule applied because federal statute threatened to "interpos[e] federal authority between a State and its municipal subdivisions"). Petitioners analogously seek to use the Relief Act to disrupt North Carolina's control of its municipal agents' borders, making the plain statement rule applicable.

2. North Carolina's annexation process reflects the state's sovereign choices for structuring its government.

Petitioners' reading of Section 206 invokes the plain statement rule because it would disrupt North Carolina's annexation laws, frustrating that state's sovereign choices

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[4] Petitioners mischaracterized the decision below by claiming the North Carolina Court of Appeals held that N.C. Gen. Stat. § 160A-50(a) "outweighs" Section 206 of the Relief Act. *See* Petition, p. 26. In reality, however, the Court of Appeals simply held Congress never intended the Relief Act to apply to this type of matter.

about how to organize its government. Annexations, while undertaken by municipalities, ultimately are an exercise of the state's sovereign power. North Carolina's Constitution vests the state legislature with the exclusive (but delegable) power to regulate municipal borders. *See* N.C. Const. Art. VII, Sec. 1. Regulating municipal boundaries is an element of state sovereignty because municipalities are state agents, assisting the state by governing and serving the territory within their respective borders. *See Hunter v. City of Pittsburgh*, 207 U.S. 161, 178-79 (1907) (Municipalities are "convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them."); *see also Smith v. City of Winston-Salem*, 247 N.C. 349, 354, 100 S.E.2d 835, 838 (1957); *Town of Grimesland v. City of Washington*, 234 N.C. 117, 123, 66 S.E.2d 794, 798 (1951). Selecting the territory its municipal agents will govern is part of how a state structures its government. The Relief Act would frustrate North Carolina's process for defining its municipal agents' territories.

North Carolina has chosen to structure its annexation process by allowing municipalities to annex independently. They may adopt self-executing annexation ordinances without obtaining specific permission for each annexation from the state legislature. *See* N.C. Gen. Stat. § 160A-29 *et seq.* (2004). This system provides many benefits, including freeing the legislature from micromanaging municipal boundaries and entrusting annexation decisions to local officials more familiar with the areas in question. Monitoring of annexations occurs through the judicial review provisions, which allow property owners to challenge a suspect annexation in court. *See* N.C. Gen. Stat. § 160A-50(a) (2004).

Finality is critical to North Carolina's annexation process. Annexing requires substantial commitment, as a municipality must extend services to the annexed area. *See*

N.C. Gen. Stat. § 160A-47(3) (2004). Extending services requires budgeting, extensive planning, incurrence of cost (and perhaps debt), and a reallocation of critical resources. Police stations and fire houses must be built, sewer and water lines must be laid, additional personnel must be hired, and other preparations must be made. The municipality must bind itself contractually with surveyors, engineers, and others who will perform this work. These preparations also must occur quickly, as annexing municipalities that fail to extend their services by specific deadlines are penalized. *See* N.C. Gen. Stat. § 160A-49(h) (2004); N.C. Gen. Stat. § 160A-49(k) (2004); N.C. Gen. Stat. § 160A-49(l) (2004). Because an annexing municipality must commit to its new residents, and commit quickly, it must quickly obtain certainty in its annexation's validity.

North Carolina law provides this certainty by limiting when annexations may be challenged. Courts lack jurisdiction to hear challenges filed more than 60 days after an annexation ordinance's adoption. *See* N.C. Gen. Stat. § 160A-50(a) (2004); *Chicora Country Club, Inc. v. Town of Erwin*, 128 N.C. App. 101, 493 S.E.2d 797, 799, 800-01 (1997).[5] Because individual annexations are not blessed by the legislature, this 60-day limitations period provides a municipality's only certainty in its annexation's validity. Once that period expires, a municipality can commit its limited resources to serving the annexed area, and it can budget in reliance upon the additional revenue the annexed

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[5] The *Chicora* case did not involve the limitations period in N.C. Gen. Stat. §160A-50(a), but instead the analogous limitations period for challenging annexations of municipalities with fewer than 5,000 persons. *See* N.C. Gen. Stat. § 160A-38(a). Further, when *Chicora* was decided, the limitations period under both N.C. Gen. Stat. § 160A-38(a) and N.C. Gen. Stat. § 160A-50(a) was 30 days rather than the current 60 days.

area will produce.[6] If challenges were not barred after the 60-day period, annexation would become prohibitively perilous. A municipality could not devote limited resources to an annexation if a single person could invalidate it at some unknown future time.

3. Petitioners' reading of the Relief Act would cripple North Carolina's annexation process.

Petitioners' reading of Section 206 would disrupt North Carolina's annexation process by tolling the 60-day period indefinitely. Section 206 tolls a servicemember's claim for his entire term of service, regardless of whether he is overseas or stateside, and regardless of whether his service actually hinders pursuing the claim. *See Conroy v. Aniskoff*, 507 U.S. 511, 514-18 (1993); *Mason v. Texaco, Inc.*, 862 F.2d 242, 244-45 (10th Cir. 1988); *Bickford v. United States*, 656 F.2d 636, 639-41 (Ct. Cl. 1981); *Ricard v. Birch*, 529 F.2d 214, 217 (4th Cir. 1975).[7] Under Section 206, tolling could last years, or perhaps decades for a career servicemember.

Consequently, if Section 206 applied to annexation challenges, a municipality could never obtain confidence in an annexation. Instead, annexations would remain vulnerable to servicemember challenges indefinitely. Even after the 60-day period, even after the annexation's effective

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[6] An annexation's effective date can be scheduled no earlier than seventy (70) days after its adoption, ensuring all challenges must be filed before the effective date. *See* N.C. Gen. Stat. § 160A-49(e)(4) (2004). Further, the annexation's effective date is delayed during any challenge. *See* N.C. Gen. Stat. § 160A-50(i) (2004). Once an annexation takes effect, therefore, state law does not contemplate any further possibility of challenge.

[7] These cases were decided under the analogous tolling provision in the Relief Act's predecessor, the Soldiers and Sailors Civil Relief Act, 50 U.S.C. App. § 525 (2002).

date, a single servicemember could invoke the Relief Act and challenge the annexation. If he succeeded, the municipality's borders would shrink to pre-annexation levels. The municipality would permanently lose resources committed to the annexed area, such as water mains, sewer lines, and police and fire stations. It might also find itself carrying significant excess costs, as personnel and equipment devoted to policing the annexed area, collecting its trash, and extinguishing its fires would suddenly become superfluous. Additionally, the municipality could find its budget in shambles, as tax receipts and other revenue derived from the annexed area would be lost. A host of other problems and questions also would arise, including the validity of permits or citations the municipality had issued in the annexed area before the annexation was nullified.[8] Even if a particular annexation was never challenged, municipal officials would have to plan and govern while never knowing if the annexation was truly final.

Facing such uncertainty, many municipalities would not annex at all, preventing residents of potential annexation areas from receiving municipal services and frustrating state policies concerning when annexation should occur. Other municipalities might annex but be slow or stingy in committing resources to annexed areas. Ultimately, North Carolina could even be forced to change its annexation laws to accommodate the Relief Act's disruption, perhaps by eliminating the judicial review provision or by requiring all annexations to be adopted by the state legislature. Regardless, the state's chosen

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[8] Residents of the formerly annexed area, meanwhile, would suddenly find themselves under new management, by a county government perhaps unprepared to govern and serve them.

annexation process would cease functioning as the legislature intended.[9]

Petitioners argue the Relief Act would not disrupt North Carolina annexations because servicemembers' annexation challenges could still be barred by laches. *See* Petition, p. 22. However, in North Carolina, "what delay will constitute laches depends upon the facts and circumstances of each case." *Williams v. Blue Cross Blue Shield of North Carolina*, 357 N.C. 170, 581 S.E.2d 415, 424 (N.C. 2003). The applicability of laches depends upon the unique facts and circumstances surrounding each claim and each claimant. Consequently, municipalities would never know how much time would be needed for laches to begin protecting their annexations against challenges. Laches would therefore not reduce the uncertainty the Relief Act would create.

Because applying Section 206 to annexation challenges would frustrate North Carolina's sovereign choices for structuring its government, the plain statement rule applies. Petitioners can prevail only by showing an "unmistakably clear" congressional intent for Section 206 to toll claims seeking to invalidate annexations. *Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991). They cannot carry this heavy burden.

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[9] The potential harm is not just prospective. The Relief Act amended the Soldiers' and Sailors' Civil Relief Act, which had existed since World War II and which contained a substantially similar tolling provision. *See* 50 U.S.C. App. § 525 (2002). If the Relief Act's tolling provision is held to apply to annexation challenges, already completed annexations throughout North Carolina could suddenly be vulnerable to servicemembers' challenges.

B. Petitioners Cannot Carry Their Burden Under the Plain Statement Rule.

Petitioners cannot demonstrate Congress intended Section 206 to toll claims seeking to invalidate annexations or other large-scale government action. In reality, Congress intended the statute to toll only claims seeking a personal recovery.

1. Annexation challenges differ fundamentally from the types of claims Congress intended the Relief Act to toll.

Annexation challenges differ fundamentally from the claims Congress intended the Relief Act to toll, because annexation challenges do not exist to vindicate a challenger's personal rights or interests. Rather, they are a mechanism North Carolina uses to monitor the activities of its political subdivisions.

The Relief Act focuses upon protecting servicemembers' personal financial interests, a fact evident from examining its various provisions. For example, Section 201 of the statute limits creditors' ability to obtain default judgments against servicemembers. Section 207 lowers interest rates on servicemembers' indebtedness. Section 301 restricts evictions of servicemembers. Other sections affect termination of motor vehicle leases, protect servicemembers' rights under life insurance policies, and limit foreclosures against their property. *See* Sec. 305; Secs. 541-549; Sec. 303. These provisions focus upon protecting servicemembers' personal financial concerns. Even Petitioners concede the Relief Act focuses upon servicemembers' "personal civil legal affairs." *See* Petition, p. 26. Similarly, when Congress adopted the tolling provision of Section 206, its purpose was to toll claims seeking to vindicate a servicemember's personal financial interests.

Annexation challenges, by comparison, do not exist to vindicate a challenger's personal rights or interests. In fact, how an annexation might affect the challenger's personal financial concerns is irrelevant and not considered by the reviewing court. *See In re Annexation Ordinance*, 278 N.C. 641, 648, 180 S.E.2d 851, 856 (1971). Instead, a challenger may attack an annexation only by arguing it fails to satisfy statutory requirements that focus upon the annexation as a whole, rather than upon how it affects challengers or their particular properties. *See* N.C. Gen. Stat. § 160A-50(f) (2004). Finally, a successful challenger obtains no personal recovery. The reviewing court simply invalidates the annexation or remands it to the municipality for correction. *See* N.C. Gen. Stat. § 160A-50(g) (2004). Thus, annexation challenges do not exist to vindicate a challenger's personal rights or interests. Rather, they exist to ensure annexations obey legislative directives and to protect state policies concerning when and how annexation should occur. Annexation challenges therefore differ fundamentally from the personal claims the Relief Act was intended to toll.

Because annexation challenges exist to help the state monitor the annexation activity of its political subdivisions, rather than to vindicate personal rights or interests, Petitioners' cases are inapplicable to this matter. The cases they cite involving tolling under the Relief Act's predecessor statute concerned the tolling of personal financial claims, not of claims seeking to invalidate large-scale government action. For example, Petitioners cite *Conroy v. Aniskoff*, 507 U.S. 511 (1993), where a servicemember sued to redeem property a town had seized to pay his delinquent taxes. *See* Petition, p. 11-13. This Court held the Relief Act's predecessor had tolled the limitations period on the servicemember's redemption claim. While that claim was directed against a municipality, however, it sought only to recover property belonging to the servicemember. It was

simply a personal claim that sought to remedy an injury to the servicemember's personal financial interests.

Similarly inapplicable is *Jinks v. Richland County*, 538 U.S. 456 (2003), where this Court held 28 U.S.C. § 1367(d) tolled the limitations period for a wrongful death claim against a county. *See* Petition, p. 20-21. Petitioners emphasize this Court held in *Jinks* that an "unmistakably clear" statement is not needed "before an Act of Congress may expose a local government to liability[.]" *Jinks*, 538 U.S. at 466-67 (emphasis added). However, annexation challenges do not expose municipalities to liability the way wrongful death or property redemption claims do. They do not remedy an "injury" the annexing municipality has committed against the challenger, but are instead a mechanism North Carolina uses to ensure annexations proceed in accordance with the state legislature's wishes. Tolling such challenges would therefore not merely prolong a municipality's exposure to a financial claim. It would directly interfere with a system North Carolina uses to regulate its municipal subdivisions. We cannot presume Congress intended to inject the Relief Act between a state and its political subdivisions in this way absent the unmistakably clear statement required by *Gregory v. Ashcroft*, 501 U.S. 452 (1991).

Finally, annexation challenges also differ from the personal claims the Relief Act was intended to toll because tolling annexation challenges would have an effect vastly disproportionate to tolling other types of claims. When applied to claims seeking a personal recovery, Section 206 has a modest scope. For example, if a servicemember is injured in tort, usually only the tortfeasor must compensate for any tolling, and usually only by preserving evidence to defend the eventual claim. If Section 206 tolled claims seeking to invalidate entire annexations, however, a single servicemember could suddenly void an annexation that had

stood for years, profoundly affecting thousands of local residents and the city and county involved. No other Relief Act provision grants such sweeping power to individual servicemembers, and nothing suggests Congress intended Section 206 to grant such sweeping power, either.

2. The Relief Act would significantly disrupt many government activities.

Indefinitely tolling the time for challenging annexations would wreak havoc on North Carolina's annexation process. Additionally, however, Petitioners' reading of Section 206 would frustrate other government activities by indefinitely tolling claims seeking to invalidate them.

For instance, if a person believes a city's or county's bond issue violated statutory procedures, they may file a challenge only within thirty (30) days after the bond order is published. *See* N.C. Gen. Stat. § 159-59 (2004). Failure to act within that time bars any challenge. *See id.* Petitioners, however, argue the Relief Act tolls "any" limitations period, even those for claims challenging large-scale government action. Under their interpretation, therefore, a servicemember could challenge a bond issue's validity months or years after its completion. Political subdivisions would face the prospect that, at some unknown future time, they might need to redeem long-ago-issued bonds, without warning and when sufficient funds might be unavailable. Issuing bonds would become substantially riskier.

North Carolina statutes also provide a 30-day window to challenge the results of property tax referenda. *See* N.C. Gen. Stat. § 153A-149(d) (2004); N.C. Gen. Stat. § 160A-209(e) (2004). Petitioners' position would allow the Relief Act to toll that limitations period indefinitely, again making government financing perilous. A servicemember

could invalidate a property tax referendum long after the taxes were collected and spent.

(Belated annexation challenges, of course, could themselves detonate municipal finances. Annual budgeting, as well as long-term financing measures like bond issues, would depend upon a tax base that could shrink dramatically, and with little warning, if a long-final annexation were suddenly invalidated by a servicemember.)

Petitioners' position also would undermine elections, as individuals have a limited time to challenge election results. *See* N.C. Gen. Stat. § 163-182.9 *et seq.*[10] (2004); N.C. Gen. Stat. § 1-522 (2004). Understandably, the window for challenging election results is short, to prevent lingering uncertainty from impeding elected officials' ability to govern. *See id.* Petitioners' view of the Relief Act, however, would stretch that window indefinitely. Consequently, elections would never be definitive or final. Even months or years after taking office, elected officials might govern while fearing a servicemember could attempt to unseat them at any time. Additionally, the Relief Act would indefinitely extend the time for challenging absentee ballot validity or a person's right to vote, further muddling election results. *See* N.C. Gen. Stat. § 163-89 (2004); N.C. Gen. Stat. § 163-85 (2004).

These are just some examples of the havoc Petitioners' erroneous interpretation of the Relief Act would create. Others exist (e.g., the statute would indefinitely extend the time for challenging the creation of county water and sewer districts, for challenging the creation of hospital

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10 Election challenges under this statute are filed with a county board rather than with a court. However, Section 206 of the Relief Act tolls the time to file claims with any "board, bureau, commission, or department." Under Appellants' erroneous view of the Relief Act, therefore, tolling still would apply.

districts, or for challenging official action taken in violation of open meetings laws. *See* N.C. Gen. Stat. § 162A-87(b) (2004); N.C. Gen. Stat. § 131E-43 (2004); N.C. Gen. Stat. § 143-318.16A (2004)). The above examples also concern only North Carolina. The Relief Act would undoubtedly also disrupt government operations in the other 49 states.

It is difficult to imagine Congress adopting such a disruptive statute. Even if it did, however, we must presume it would not have embarked upon such an endeavor lightly. Congress first would have studied the implications, weighing the benefits that tolling would provide to servicemembers against the inevitable disruption it would cause state and local governments. Congress also would have considered the constitutional issues necessarily invoked by the prospect of a federal statute so thoroughly intruding upon state government. Nothing suggests Congress considered any of these issues when adopting the Relief Act, revealing it never intended the statute to apply as Petitioners urge.

3. The Relief Act's legislative history defeats Petitioners' reading.

The Relief Act's legislative history further rejects Petitioners' interpretation of Section 206. During Congress's consideration of the Relief Act, the Senate Committee on Veterans' Affairs issued a 76-page report on the statute's intended effects. *See* S. Rep. No. 108-197 (2003).[11] This report identified only two provisions affecting State or local governments, both concerning income taxing of servicemembers (Section 206 was not one of them). The

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[11] The text of the Senate bill reported upon (S. 1136) was later substituted for the text of House Bill H.R. 100. The amended H.R. 100 was then adopted by Congress and became the Relief Act. *See, eg.*, 149 Cong. Rec. D1316-02 (2003 WL 22852557); 149 Cong. Rec. H. 12868; 149 Cong. Rec. H. 12928.

report declared the Relief Act's remaining provisions "would have no impact on state, local or tribal governments." *Id.* at 13 (emphasis added). This legislative history defies Petitioners' claim that Congress intended Section 206 to affect annexations or other large-scale government operations.

4. Petitioners rely upon only a single, isolated word, which fails to satisfy the plain statement rule.

To support their reading of the Relief Act, Petitioners can only emphasize that Section 206 tolls "any" period limited by law. Section 206, Pub. Law 108-189 of 2003. This single, isolated word, however, fails to satisfy the plain statement rule, as this Court recognized just last year in *Nixon v. Missouri Mun. League*, 541 U.S. 125, 124 S. Ct. 1555, 1565 (2004). In *Nixon*, Missouri had adopted a statute barring its municipalities from the telecommunications business. However, the federal Telecommunications Act prohibited states from excluding "any entity" from that business. Missouri municipalities argued they qualified as "any entity" and that the Telecommunications Act therefore pre-empted Missouri's attempt to bar them from providing telecommunications services. Despite the Telecommunications Act's broad "any entity" language, however, this Court found no "plain statement" that Congress intended the Telecommunications Act to affect Missouri's control over its municipal subdivisions, and it rejected the municipalities' claim. *See Nixon*, 124 S. Ct. at 1565.

Similarly, the word "any" in Section 206 of the Relief Act, read in isolation, fails to demonstrate Congress intended the awesome intrusion into state sovereignty Petitioners seek. While "any" makes this provision broad, its breadth reflects only that the personal claims Congress intended to toll are many and varied (negligence actions,

breach of contract, worker's compensation, intentional torts, enforcing liens, quiet title, wages claims, etc.). The word "any" alone fails to demonstrate an "unmistakably clear" congressional intent for Section 206 to disrupt State and local government operations on a large scale. *See Nixon*, 124 S. Ct. at 1561 (" 'any' can and does mean different things depending upon the setting.")

5. Conclusion.

The decision below was sound. The Court of Appeals obeyed this Court's precedents by applying the plain statement rule to determine if Congress truly intended the intrusion upon state sovereignty that Petitioners urge. After examining the Relief Act's language, legislative history, and purpose, the Court of Appeals properly concluded Congress never intended the statute to affect state annexations. The decision below should stand, and *certiorari* is unwarranted.

IV. PETITIONERS' READING WOULD RENDER THE RELIEF ACT UNCONSTITUTIONAL AS APPLIED.

Finally, even were the Relief Act intended to affect challenges to North Carolina annexations, the statute would be unconstitutional as applied. North Carolina is a sovereign entity in our federal system. It has constitutionally protected authority to structure and organize its government, authority with which Congress cannot freely interfere. *See, e.g., Coyle v. Smith*, 221 U.S. 559, 565 (1911) (Congress cannot choose state's capital because choosing government seat is "essentially and peculiarly" state's power). North Carolina's annexation laws help draw that state's internal political boundaries. They are an exercise of the state's power to arrange its government, and the Relief Act cannot constitutionally frustrate those laws' operation.

This Court has specifically held a state's authority over its governmental structure includes the ability to organize its municipal subdivisions without federal interference. In *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178-79 (1907), Pennsylvania residents challenged a state statute that permitted larger municipalities to absorb smaller ones. This Court rejected a claim that the Pennsylvania statute was unconstitutional, recognizing that a state's ability to arrange and control its municipalities lies beyond the reach of federal law:

> Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. ... The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. ... The State, therefore, at its pleasure may modify or withdraw all such powers ... expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. ... In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

Hunter v. City of Pittsburgh, 207 U.S. 161, 178-79 (1907) (emphasis added). *Hunter*'s recognition of broad state control over municipal subdivisions has been limited only by this Court's recognition that federal law can intervene to ensure state political structures do not deny individuals

their constitutional rights. For example, under Section 5 of the federal Voting Rights Act, some municipalities' annexations must be precleared by the federal government to ensure they will not result in voting discrimination. *See* 42 U.S.C. § 1973c (2005). This Court has recognized that the Voting Rights Act's ability to intrude upon state government structure in this way rests upon Congress's Fifteenth Amendment power to protect individual voting rights. *See Lopez v. Monterey County*, 525 U.S. 266, 269 (1999). But, unless municipal structure threatens individuals' constitutional rights, *Hunter* continues to instruct that control of municipal boundaries is a state political question not subject to federal law. For example, the Fourth Circuit recently relied upon *Hunter* in rejecting a constitutional challenge to North Carolina's annexation laws. *See Barefoot v. City of Wilmington*, 306 F.3d 113, 123 (4th Cir. 2002) (citing *Hunter*) (unless voting rights or suspect classifications implicated, "annexation decisions are within the absolute discretion of the State"), *cert. denied*, 537 U.S. 1019 (2002).

If the Relief Act applied as Petitioners' urge, it would violate *Hunter*'s recognition that states have broad political discretion over how their municipal agents are organized. Further, unlike the Voting Rights Act, the Relief Act would not reflect an attempt by Congress, acting under the Civil War Amendments, to remedy violations of individuals' constitutional rights. Instead, if Petitioners' reading were correct, the statute would be an attempt by Congress to control state political structures while using its Article I powers to promote federal policy choices. Petitioners cite no authority supporting the idea that Congress's Article I powers allow it to override state control over municipal boundaries in this manner.

To argue that the Relief Act can constitutionally disrupt North Carolina's annexation process, Petitioners cite *United States v. Onslow County*, 728 F.2d 628 (4th Cir. 1984).

There, because a large military base was located in Onslow County, North Carolina, many children of non-resident servicemembers attended County schools. The County charged those servicemembers a fee to fund their children's education. However, the Relief Act's predecessor barred states from imposing income taxes on non-resident servicemembers, and the Fourth Circuit struck the County's fee because it effectively was an income tax. The Fourth Circuit rejected the County's argument that, in barring the fee, the Relief Act's predecessor unduly infringed upon state sovereignty. Rather, the court found that the statute was a necessary and proper exercise of Congress's war powers.

However, the injury the Relief Act would cause state sovereignty in this case differs substantially from the limited impact its predecessor had in *Onslow County*. In *Onslow County*, the Relief Act's predecessor imposed upon the County only a limited financial burden. It did not directly override North Carolina's choices for how its government should be structured. Further, the statute also imposed a financial burden only upon a few North Carolina localities (those with high servicemember populations), and the Fourth Circuit concluded that state sovereignty was not violated partially because of this limited impact. "[H]ere the federal legislation burdens only those few localities in any state which are home to large federal military installations." *Onslow County*, 728 F.2d at 639. By comparison, even a single servicemember may challenge an annexation in North Carolina. *See* N.C. Gen. Stat. § 160A-50(a) (2004). If applied to toll annexation challenges, therefore, the Relief Act would affect every North Carolina municipality, not just those near military installations.

Petitioners also argue that *Onslow County* held the Tenth Amendment is a "rule of construction" imposing no substantive external limits on congressional war powers. *See* Petition, p. 24-25. Even if viewed as a rule of

construction, however, the Tenth Amendment still must guide how we interpret the Constitution. It confirms that "powers not delegated to the United States ... are reserved to the States[.]" Therefore, it is insufficient for Petitioners simply to argue the Tenth Amendment imposes no substantive external limits Congress's delegated powers. They also must demonstrate that the Constitution actually delegates to Congress, as part of Congress's war powers, the power to override state control over municipal boundaries. Otherwise, as the Tenth Amendment confirms, that power is reserved to the states. "The Tenth Amendment thus directs us to determine ... whether an incident of state sovereignty is protected by a limitation on an Article I power." *New York v. United States*, 505 U.S. 144, 157 (1992).

Petitioners offer nothing to suggest our Constitution's Framers, when creating congressional war powers, divested the states of their traditional power to arrange their political subdivisions and delegated that power to the national government. None of the cases cited in their Petition involved federal war powers legislation attempting to modify a state's internal political boundaries. Even *Onslow County* is inconsistent with a claim that war powers can be used to restructure state political subdivisions, as there the Fourth Circuit recognized that "[t]he matters with which the War Powers deal are national in character[.]" *Onslow County*, 728 F.2d at 641. Finally, the idea that war powers legislation can override a state's control over its municipal agents' boundaries directly contradicts *Hunter v. City of Pittsburgh*, 207 U.S. 161, 179 (1907), wherein this Court declared that state control over municipal borders is "unrestrained by any provision of the Constitution[.]"

Petitioners' reading of the Relief Act would allow that statute to frustrate North Carolina's sovereign power to choose the territories of its municipal agents, exceeding the

scope of Congress's Article I war powers. In addition to finding no support in the Relief Act's text, history, or purpose, Petitioners' interpretation would render that statute unconstitutional as applied.

CONCLUSION

Certiorari is unwarranted. Reviewing this case is not necessary to settle any conflict brewing among lower courts or to address an urgent question of federal law. Further, the decision below adopts a sound interpretation of the Relief Act, while Petitioners' erroneous interpretation would render the statute unconstitutional as applied. The Petition should be denied.

Dated: December 14, 2005 /s/

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